IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 12542 of 2006(R)

PETITIONER:

E.N.SOMAN, AGED 53 YEARS, S/O.LATE NARAYANAN, SANGEETHA HOUSE, PAROL, NEELESWARAM PO, KASARGOD (ASST.ENGINEER, KERALA STATE ELECTRICITY BOARD, ELECTRICAL SECTION, UDMA UNDER ELECTRICAL CIRCLE, KASARGODE).

BY ADV. SRI.M.A.ABDUL HAKHIM
SRI.K.A.NOUSHAD

RESPONDENTS:

1. **KERALA STATE ELECTRICITY BOARD, REP: BY ITS SECRETARY, VIDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.**
2. **DEPUTY CHIEF ENGINEER, ELECTRICAL CIRCLE, KERALA STATE ELECTRICITY BOARD, KASARGOD.**
3. **CHIEF ENGINEER (HRM), KERALA STATE ELECTRICITY BOARD, VIDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.**
4. **CHAIRMAN, KERALA STATE ELECTRICITY BOARD,VIDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.**
5. **K.S.DAMODARAN NAMBOODIRI, ENQUIRY OFFICER & EXECUTIVE ENGINEER, ELECTRICAL CIRCLE, KASARGOD.**

BY ADV. SRI.K.S.ANIL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER NO.TS2/1/LE-62/AS NO.52/97-98 KANHANGAD/1313 DTD. 16/02/98 OF THE EXECUTIVE ENGINEER, KANHANGAD SANCTIONING THE SYSTEM IMPROVEMENT WORK AT ALAI UNDER MAVUNGAL ELECTRICAL SECTION.

EXT.P2: COPY OF THE REQUEST DTD. 14/09/1999 SUBMITTED BY THE SAID SMT. NARAYANI.

EXT.P3: COPY OF THE LETTER FROM K.KUNHAMBU NAIR TO THE ASST.ENGINEER, ELECTRICAL SECTION, MAVUNGAL.

EXT.P4: COPY OF THE REQUEST DTD. 3/01/2000 SUBMITTED BY SRI.K.KUNHAMBU NAIR STO THE ASSISTANT ENGINEER, ELECTRICAL SECTION, MAVUNGAL.

EXT.P5: COPY OF THE EXPLANATION DTD. 28/01/2002 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P6: COPY OF THE ORDER DTD. 23/04/2002 ISSUED BY THE 2ND RESPONDENT ORDERING DEPARTMENTAL ENQUIRY AND APPOINTING THE ENQUIRY OFFICER.

EXT.P7: COPY OF THE ENQUIRY REPORT SUBMITTED BY THE ENQUIRY OFFICER.

EXT.P8: COPY OF THE SHOW CAUSE NOTICE DTD. 23/01/2004 SERVED ON THE PETITIONER.

EXT.P9: COPY OF THE EXPLANATION DTD. 25/02/2004 SUBMITTED BY THE PETITIONER.

EXT.P10: COPY OF THE ORDER DTD. 23/04/2004 OF THE 2ND RESPONDENT.

EXT.P11: COPY OF THE APPEAL SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P12: COPY OF THE ORDER DTD. 31/08/2005 OF THE 3RD RESPONDENT.

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EXT.P13: COPY OF THE APPEAL DTD. 25/11/2005 SUBMITTED TO THE CHAIRMAN.

EXT.P14: COPY OF THE ORDER DTD. 23/12/2005 OF THE 4TH RESPONDENT.

EXT.P15: COPY OF THE ORDER DTD. 23/03/2006.

EXT.P16: COPY OF THE REPORT SUBMITTED BY THE EXECUTIVE ENGINEER, ELECTRICAL DIVISION, KANHANGAD, WHICH IS MARKED AS EXT.P8 IN THE ENQUIRY PROCEEDINGS.

EXT.P17: COPY OF THE SKETCH ALONG WITH THE INDEX REGARDING THE POSITION OF VARIOUS TRANSFORMERS AND THE CONSUMERS' LOCATION.

EXT.P18: COPY OF THE BOARD ORDER NO.TG1/9515/98 DTD. 9/09/1988.

EXT.P19: COPY OF THE ORDER DTD. 12/01/1994 OF KSEB.

/TRUE COPY/

P.A.TO JUDGE

KSS

ANTONY DOMINIC, J.
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W.P.(C) NO. 12542 OF 2006
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Dated this the 8th day of August, 2007

J U D G M E N T

While working as Sub Engineer at Mavungal Electrical Section of Kasargod District, Ext.P4 charges were laid against the petitioner, to which petitioner submitted Ext.P5 explanation. The explanation submitted was found to be unsatisfactory and by Ext.P6, an Enquiry Officer was appointed. Ext.P7 report of the enquiry reveals that both documentary and oral evidence was adduced before the Enquiry Officer. In so far as the first two charges against the petitioner are concerned, they were held to be proved. Charge Nos. 3 and 4 were held to be partially proved and Charge No.5 was held to be not proved. The disciplinary authority thereafter issued Ext.P8 show cause notice. In so far as charges 1 and 2 are concerned, the disciplinary authority held that he is accepting the findings of the

Enquiry Officer. In so far as charge No.3 is concerned, disciplinary authority held that the charge is fully proved and it is further held that the image of the Board was also affected badly, which was the subject matter of Charge No.5. On this basis, petitioner was called upon to show cause why punishment of barring next two increments with cumulative effect and also why the loss sustained by the Board by his irregular act amounting to Rs.18,500/- plus interest shall not be recovered from him. To Ext.P8, the petitioner submitted Ext.P9 explanation which was rejected and disciplinary authority imposed punishment of barring of two increments with cumulative effect and ordered recovery of loss of Rs.18,500/- with interest, by Ext.P10 order. Petitioner pursued the matter in appeal by Ext.P11, in which the appellate authority passed Ext.P12 order reducing the punishment to barring of one increment with cumulative effect along with recovery of the amount of loss together

with interest. Still aggrieved, the petitioner filed Ext.P13 representation before the Chairman of the Board, in which Ext.P14 order was passed reducing the punishment and ordering bar of one increment for six months without cumulative effect and recovery of the amount lost without any interest. He pursued the matter by filing review , that also met with dismissal by Ext.P15. It is in this background, the petitioner has filed this writ petition seeking to quash the orders of punishment as confirmed in appeal, revision and review.

2. Counsel for the writ petitioner canvassed on the propriety of the findings entered into by the Enquiry Officer and the punishment that was imposed by the disciplinary authority as confirmed in the Appellate order as well as the revision and the review orders. However, at the outset I should caution myself about the limits of my jurisdiction under Article 226 of the Constitution of India. Exercising the

power of judicial review, this Court will be justified in interfering with proceedings in a disciplinary action only if the findings of the Enquiry Officer are perverse in the sense that reasonable person would not arrive at such a conclusion on the evidence available. This is a case where even before the Enquiry, the Vigilance Department had conducted an enquiry and apparently recommended disciplinary action. On the materials available, the Enquiry Officer found the petitioner guilty and that has been confirmed throughout. On going through Ext.P7 Enquiry Report, I do not agree with the counsel for the writ petitioner that the findings arrived at by the Enquiry Officer are vitiated on any of the grounds that are available for judicial review.

3. As already stated, in Ext.P7 report of Enquiry, Charge Nos. 1 and 2 were held to be proved. In so far as Charge Nos. 3 and 4 are concerned, they were held to be partially proved and Charge No.5 was held to be not proved.

However, the disciplinary authority in Ext.P8 show cause notice held that Charge No.3 was proved. He has also held that the action of the petitioner tarnished the image of the Board, which was charge No.5. Thus the disciplinary authority disagreed with the Enquiry Officer atleast in so far as Charge Nos. 3 and 5 are concerned. It is on that basis that the disciplinary authority called upon the petitioner to show cause why the punishment shall not be imposed on him.

4. The records would reveal that before disagreeing with the conclusions of the Enquiry Officer, in so far as Charge Nos.3 and 5 are concerned, the disciplinary authority did not put the delinquent on notice nor was he given an opportunity to sustain findings in the Enquiry report, which were in his favour. It is settled law that if a disciplinary authority proposes to disagree with the findings of the Enquiry Officer, indicating the tentative reasons thereof, he

should put the delinquent on notice. This has not been done in this case and therefore the action of the disciplinary authority in holding that Charge Nos. 3 and 5 are proved has to be held to be violative of the principles of natural justice and on that ground, the punishment imposed by Ext.P10 deserves to be interfered with. Consequently, Exhibits P12, P13 and P15 orders confirming Ext.P10 order of punishment also has to be set aside.

However, for the only reason that show cause notice was not given before disagreeing with the findings on Charge Nos. 3 and 5 are concerned, the action against the petitioner, who is still in service of the Board, does not lapse. The disciplinary authority is entitled to issue notice indicating the tentative reasons for its disagreement and after considering his explanation, can proceed with the matter thereafter and impose punishment that it considers appropriate. However, if the disciplinary authority does not

want to rely on findings of Charge Nos. 3 and 5 and proposes to rely on Charge Nos. 1 and 2 alone, without issuing such notice, they are entitled to proceed with the matter. Writ petition is disposed of accordingly.

ANTONY DOMINIC, JUDGE.

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